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The Supreme Court of Pennsylvania Sustains the
Constitutionality of the Gaming Act:
*Pennsylvanians Against Gambling Expansion
Fund, Inc. v. Commonwealth*

PENNSYLVANIA CONSTITUTIONAL LAW – CONSTITUTIONALITY OF LEGISLATION – PENNSYLVANIA RACE HORSE DEVELOPMENT AND GAMING ACT – The Supreme Court of Pennsylvania upheld the constitutionality of the Gaming Act.

Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth, 877 A.2d 383 (2005).

Governor Edward G. Rendell signed the Pennsylvania Race Horse Development and Gaming Act (hereinafter “Gaming Act”) into law on July 5, 2004 as Act 71 of 2004.¹ The constitutionality of the procedures employed by the Pennsylvania General Assembly in which House Bill 2330 (hereinafter “H.B. 2330”) evolved into the Gaming Act was the center of the dispute in this case.²

On February 3, 2004, H.B. 2330 was introduced into the House and was titled, “An Act Providing for the Duties of the Pennsylvania State Police Regarding Criminal History Background Reports for Persons Participating in Harness or Horse Racing.”³ This bill was one page long and directed the Pennsylvania State Police to provide the State Harness and Horse Racing Commissions with criminal background checks and fingerprint data on all applicants for licenses.⁴ The bill was then given the three required considerations in the House and two initial considerations in the Senate.⁵

The third consideration by the Senate on July 1, 2004 resulted in the bill being substantially amended.⁶ The amendments

1. *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 877 A.2d 383, 390 (Pa. 2005). See also *The Pennsylvania Race Horse Development and Gaming Act*, 4 PA. CONS. STAT. §§ 1101-1904 (2004).

2. *Pennsylvanians*, 877 A.2d at 391. Chief Justice Cappy authored the opinion for the court, Justices Castille, Nigro, Saylor, Eakin, and Baer joined the opinion. *Id.* Justice Newman did not participate in the consideration or opinion of this matter. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* at 391-92.

lengthened the bill to 145 pages and the name was altered to the Gaming Act in consideration of these changes.⁷ The result of the Gaming Act was to approve the creation of slot machine casinos throughout Pennsylvania.⁸ The Gaming Act also formed the Pennsylvania Gaming Control Board, authorized the issuance of licenses to operate the casinos, and approved the distribution of revenues from the casinos.⁹ The revenues were to be distributed to various funds, which were also created by the Act.¹⁰ After the amendments, the bill was sent to the House where it was voted on and passed on July 3, 2004.¹¹ The bill was passed by the Senate on July 4, 2004.¹² Governor Rendell then signed the Gaming Act into law on July 5, 2004 as Act 71 of 2004.¹³

The constitutionality of the legislative process in the passage of the Gaming Act was questioned by the filing of a complaint by a group of concerned citizens (hereinafter "Concerned Citizens") against the Commonwealth of Pennsylvania, Governor Rendell, and the leaders of the Pennsylvania House and Senate (hereinafter, collectively "Commonwealth").¹⁴ The allegations of the com-

7. *Pennsylvanians*, 877 A.2d at 392.

8. *Id.* The court stated:

The bill as amended included the creation of the Pennsylvania Gaming Control Board, the issuance of gambling licenses authorizing the creation of a variety of slot machine casinos, the generation and distribution of revenues from the licenses, the creation of numerous funds including the Gaming Fund, the Pennsylvania Horse Race Fund, the Gambling and Economic Development and Tourism Fund, the Property Tax Relief Fund as well as a Compulsive and Problem Gambling Treatment Fund.

Id. See also 4 PA. CONS. STAT. §§ 1101-1904.

9. *Pennsylvanians*, 877 A.2d at 392.

10. *Id.*

11. *Id.*

12. *Id.* at 393.

13. *Id.*

14. *Pennsylvanians*, 877 A.2d at 390 n.1. Petitioners are: Pennsylvanians Against Gambling Expansion Fund, Inc.; Pennsylvania Family Institute; The League of Women Voters of Pennsylvania; Gibson E. Armstrong, Senator of the 13th Senatorial District; Paul J. Clymer, Representative of the 145th Legislative District; Gregory S. Vitali, Representative of the 166th Legislative District; Gibson C. Armstrong, Representative of the 100th Legislative District; Jerry A. Stern, Representative of the 80th Legislative District; Dick Shellenberger, Lancaster County Commissioner; The Commonwealth Foundation; The Keystone Christian Education Association; A United Methodist Witness of Pennsylvania; No Dice, Inc.; The Reverend Dr. Thomas E. Richards, Jr., in his individual capacity; Mark Kovscek, in his individual capacity; Lois J. Romberger, in her individual capacity; and C. Douglas Rothgaber, in his individual capacity. *Id.* Respondents are: Commonwealth of Pennsylvania; Edward G. Rendell, in his official capacity as Governor of the Commonwealth of Pennsylvania; Robert C. Jubelirer, President *Pro Tempore* of the Senate of the Commonwealth of Pennsylvania; John M. Perzel, Speaker of the House of Representatives of the Commonwealth of Pennsylvania; Robert J. Mellow, Minority Leader of the Senate of the Commonwealth of Pennsylvania; H. William DeWeese, Minority Leader of the House of

plaint were that the Gaming Act violated Article III, Sections 1, 3, 4, 6, and 10 of the Pennsylvania Constitution.¹⁵ The complaint also alleged that the delegation of power to the Gaming Control Board was unconstitutional.¹⁶ The Commonwealth answered the complaint by filing a demurrer, arguing that the procedures followed by the General Assembly in passing the Gaming Act did not violate any provisions of the Pennsylvania Constitution.¹⁷

The Pennsylvania Supreme Court determined that it had original jurisdiction over issues surrounding the Gaming Act¹⁸ and that the several legislators among the Concerned Citizens had standing to sue to enjoin the enforcement of the legislation.¹⁹ The court added that a challenger to the constitutionality of a statute must overcome the strong presumption of constitutionality of legislative actions, and a statute will not be deemed unconstitutional unless it clearly, palpably, and plainly violates the constitution.²⁰

The Concerned Citizens argued that the Gaming Act was unconstitutional because it violated Article III, Section 3 of the Pennsylvania Constitution in that the Act contained multiple subjects, including racehorse development and gaming.²¹ The Commonwealth countered this argument with the assertion that the amendments to the bill must be germane to the original subject of the bill.²² H.B. 2330 began as a bill providing background checks on applicants for horseracing licenses and, after amendment, approved the creation of slot machine casinos throughout Pennsyl-

Representatives of the Commonwealth of Pennsylvania; and The Pennsylvania Gaming Control Board. *Id.*

15. *Id.* at 392. See PA. CONST. art. III, §§ 1, 3, 4, 6, 7, 10.

16. *Pennsylvanians*, 877 A.2d at 392.

17. *Id.*

18. The Pennsylvania Race Horse Development and Gaming Act, 4 PA. CONS. STAT. §§ 1101-1904. Section 1904 provides in part:

The Pennsylvania Supreme Court shall have exclusive jurisdiction to hear any challenge to or to render a declaratory judgment concerning the constitutionality of this part. The Supreme Court is authorized to take such action as it deems appropriate, consistent with the Supreme Court retaining jurisdiction over such a matter, to find facts or to expedite a final judgment in connection with such a challenge or request for declaratory relief.

Id.

19. *Pennsylvanians*, 877 A.2d at 392-93. See *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 579 (Pa. 2003).

20. *Pennsylvanians*, 877 A.2d at 393. See *Pennsylvania School Boards Association, Inc. v. Commonwealth Association of School Administrators*, 805 A.2d 476, 479 (Pa. 2002).

21. *Pennsylvanians*, 877 A.2d at 394. See PA. CONST. art. III, § 3. Section 3 states: "No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof." PA. CONST. art. III, § 3.

22. *Pennsylvanians*, 877 A.2d at 394.

vania.²³ The Commonwealth asserted that the Gaming Act did not violate the Pennsylvania Constitution because amendments are germane to a bill when they do not wholly alter the subject matter of the bill.²⁴ The Commonwealth continued that the subject matter of the Gaming Act was not substantially altered because the bill is expected to undergo a transformation during the enactment process.²⁵ The argument by the Commonwealth was that, as long as all provisions of the bill relate to the same subject (regulating gaming) then the legislation meets the "germane" requirement and is constitutional.²⁶

The Pennsylvania Supreme Court held that the Gaming Act did not violate Article III, Section 3 of the Pennsylvania Constitution for failure to meet the single-subject requirement.²⁷ Chief Justice Cappy reasoned that the purpose of section 3 is to prevent the legislature from hiding the true purpose of a piece of legislation by inserting a number of unrelated subjects into the bill.²⁸ The court further held that a bill with a single unifying subject will meet the requirements of section 3 if all of the provisions are germane to that subject.²⁹ When amendments to legislation are involved, the court asserted that the germaneness test is met if the amendments are germane to the main objective and title of the bill.³⁰ Applying these rules, the court found that the regulation of gaming was the single unifying subject of the Gaming Act and thus it did not violate the single-subject requirement of the Constitution.³¹

The Concerned Citizens further argued that the single-subject requirement was violated by the distribution of funds to certain entities³² that were unrelated to the single unifying subject of gaming regulation.³³ The Commonwealth countered by asserting that the single-subject requirement was not violated by the dis-

23. *Id.*

24. *Id.*

25. *Id.* at 394-95.

26. *Id.*

27. *Pennsylvanians*, 877 A.2d at 396. See PA. CONST. art. III, § 3.

28. *Pennsylvanians*, 877 A.2d at 395. See *City of Philadelphia*, 838 A.2d at 586.

29. *Pennsylvanians*, 877 A.2d at 396. See *City of Philadelphia*, 838 A.2d at 589.

30. *Pennsylvanians*, 877 A.2d at 395. See *City of Philadelphia*, 838 A.2d at 587.

31. *Pennsylvanians*, 877 A.2d at 396.

32. *Id.* The entities as listed by the Supreme Court of Pennsylvania include: The Pennsylvania Convention Center, the Pittsburgh International Airport, Pittsburgh Hotel and Convention Center, various indebtedness from urban redevelopment laws, transfers of money to the Volunteer Fire Company Grant Program, five million dollars for local law enforcement and each county that receives payments under the Forest Reserves Municipal Financial Relief Law. *Id.*

33. *Id.*

bursements.³⁴ The monies to be distributed were generated from gaming activities, which created a nexus between the allocation of funds and the regulation of gaming.³⁵ The Commonwealth also asserted that section 3 was not violated because the allocation of fees flowed naturally from the imposition of the fees.³⁶ This argument was countered by the Concerned Citizens, who claimed that the only connection between the regulation of gaming and the special funds was the source of the funds, and that this did not satisfy section 3.³⁷

Chief Justice Cappy framed the issue around the Concerned Citizens' last argument and asked the court to determine whether the constitutional germaneness test is met by a source-only subject nexus.³⁸ The court relied on *Commonwealth v. Powell*³⁹ in finding that appropriations and disbursements made through a single statutory enactment must be made in a manner germane to the single-subject of the bill.⁴⁰ The germaneness test is also met when appropriations and disbursements are made in separate bills as authorized by Article III, Section 11 of the Constitution.⁴¹

The court determined that some of the disbursements were not germane to the single-subject of the statute, were not made in separate bills, and thus violated Article III, Section 3 of the Pennsylvania Constitution.⁴² Section 1408 of the Gaming Act provided that funds from the State Gaming Fund should be distributed to the Volunteer Fire Company Grant Program and schools under the Forest Reserves Municipal Financial Relief Law.⁴³ The court found that these distributions both had a source-only subject

34. *Id.* at 396-97.

35. *Id.* at 397.

36. *Pennsylvanians*, 877 A.2d at 397. *See also* *Commonwealth ex rel. Bell v. Powell*, 94 A. 746 (Pa. 1915).

37. *Pennsylvanians*, 877 A.2d at 397.

38. *Id.*

39. *Commonwealth ex rel. Bell v. Powell*, 94 A. 746 (Pa. 1915).

40. *Pennsylvanians*, 877 A.2d at 398. *See Powell*, 94 A. at 749. The court in *Powell* held that, "to withstand single-subject challenge, the designation or use of the monies collected under a statute must also be germane to the overall subject of the statute if the legislature is going to disburse funds through a single statutory enactment." *Powell*, 94 A. at 749.

41. *Pennsylvanians*, 877 A.2d at 400. *See* PA. CONST. art. III, § 11. Section 11 provides that "[t]he general appropriation bill shall embrace nothing but appropriations for the executive, legislative, and judicial departments of the Commonwealth, for the public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject." PA. CONST. art. III, § 11.

42. *Pennsylvanians*, 877 A.2d at 402. *See* PA. CONST. art. III, § 3.

43. 4 PA. CONS. STAT. § 1408 (2004).

nexus to the regulation of gaming, and the Gaming Act authorized direct disbursement of monies to these entities.⁴⁴ These disbursements therefore failed to meet the requirements of section 3 and were unconstitutional.⁴⁵ The court then severed the unconstitutional provisions from the Gaming Act.⁴⁶

Another argument that the legislative process violated Article III, Section 3 of the Pennsylvania Constitution presented by the Concerned Citizens was that the subject of the bill was not clearly expressed in its title.⁴⁷ The Concerned Citizens maintained that when comparing the titles of H.B. 2330 and the Gaming Act, the amendments were not relevant to the original purpose and subject of H.B. 2330.⁴⁸ The argument of the Concerned Citizens continued that the change in title from "An Act Providing for the Duties of the Pennsylvania State Police Regarding Criminal History Background Reports for Persons Participating in Harness or Horse Racing" to "The Pennsylvania Race Horse Development and Gaming Act" shows that the passage of the bill was unconstitutional because it violated article III, section 3, which forbids the changing of the purpose of a bill via an amendment.⁴⁹

The Commonwealth argued that the purpose of the clearly expressed title provision in article III, section 3 of the constitution is to indicate to the General Assembly the contents of a bill.⁵⁰ Under this rationale, section 3 would only be violated if the title to a bill actually deceived legislators or would not put reasonable persons on notice of the content in the bill.⁵¹ The Commonwealth contended that the Concerned Citizens lacked evidence because they did not assert that the title of H.B. 2330 was deceptive as to any

44. *Pennsylvanians*, 877 A.2d at 402-03.

45. *Id.* at 402-03. See PA. CONST. art. III, § 3.

46. *Pennsylvanians*, 877 A.2d at 403. See *Commonwealth v. Mockaitis*, 834 A.2d 488, 502 (Pa. 2003). Unconstitutional provisions are generally severable from the bill. *Mockaitis*, 834 A.2d at 502. The provisions are not severable only if the "valid provisions are so essentially and inseparably connected with, and so depend upon, the void provision or application, that it cannot be presumed the General Assembly would have enacted the remaining valid provisions without the void one." *Id.*

47. *Pennsylvanians*, 877 A.2d at 404. See PA. CONST. art. III, § 3. Section 3 provides that "[n]o bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof." PA. CONST. art. III, § 3.

48. *Pennsylvanians*, 877 A.2d at 404.

49. *Id.* See PA. CONST. art. III, § 3.

50. *Pennsylvanians*, 877 A.2d at 404-05.

51. *Id.*

legislators, or that reasonable persons would be on notice of the contents of the Gaming Act.⁵²

The Pennsylvania Supreme Court agreed with the Commonwealth and held first that reasonable persons would be on notice of the subject matter of the Gaming Act, and second, that the legislation did not violate Article III, Section 3 of the Pennsylvania Constitution.⁵³ The court followed the interpretation suggested by the Commonwealth that, to violate section 3, either legislators must actually be deceived, or no reasonable person could be able to ascertain the subject matter of the bill from its title.⁵⁴ Applying the facts to the case, the court held that the Concerned Citizens failed to show that the title was violative of Article III, Section 3 of the Pennsylvania Constitution.⁵⁵

The next issue the court determined was whether the procedures for enactment violated the change in the original purpose clause of article III, section 1.⁵⁶ The Concerned Citizens asserted that the purpose of this rule is to eliminate deception, confusion, and misconduct.⁵⁷ They claimed that section 1 of the constitution was violated because the original and amended titles of the bill were both deceptive, and that this position was exemplified in the manner in which the bill was pushed through the General Assembly in three days after the amendments.⁵⁸ According to the Concerned Citizens, the original purpose of the bill was also changed because the legislation began as a bill governing fingerprinting at racetracks, and then it became a bill creating casinos and a regulatory board to govern the casinos.⁵⁹

The Commonwealth countered that article III, section 1 was not violated because the original purpose of H.B. 2330, the regulation of gaming, remained the same from its creation to its passage as the Gaming Act.⁶⁰ While the amendments to the Gaming Act resulted in an expansion and introduction of new topics, the bill remained true to its original purpose of regulating gaming.⁶¹ To

52. *Id.* at 405.

53. *Id.* at 406. See PA. CONST. art. III, § 3.

54. *Pennsylvanians*, 877 A.2d at 406.

55. *Id.*

56. *Id.* See PA. CONST. art. III, § 1. Section 1 provides, "No law shall be passed except by bill, and no bill shall be so altered or amended, on its passage through either House, as to change its original purpose." PA. CONST. art. III, § 1.

57. *Pennsylvanians*, 877 A.2d at 406.

58. *Id.*

59. *Id.* at 407.

60. *Id.*

61. *Id.*

support its claim, the Commonwealth relied on the holding of the Pennsylvania Supreme Court in *Consumer Party v. Commonwealth*.⁶² In *Consumer Party*, the court stated that a constitutional challenge based on a change in original purpose will fail if the bill is presented in final form to both houses for consideration and adoption.⁶³

Chief Justice Cappy agreed with this description of the holding of *Consumer Party*, but found that presenting the bill only in its final form did not meet the requirements of article III, section 1.⁶⁴ This provision of the constitution requires that the bill not be changed in its original purpose.⁶⁵ The use of "change" in this provision led the court to determine that a bill must be analyzed by comparing the original and final forms.⁶⁶ The court then adopted a new two-prong test to be applied by courts in evaluating whether a bill has changed its original purpose.⁶⁷ The first inquiry under the test involves a comparison of the original and final purposes of the bill to determine if amendments or alterations have caused a change in the original purpose of the bill.⁶⁸ The court stated that the next determination involved whether the title and contents of the bill in final form were deceptive.⁶⁹ The court noted that, if the legislation passes both prongs of this test, it would meet the requirements of Article III, Section 1 of the Pennsylvania Constitution.⁷⁰

In applying the facts of *Pennsylvanians* to the newly formed test, the court determined that the Gaming Act was in accord with the requirements of section 1.⁷¹ Under its analysis, the court held that the amendments and alterations of H.B. 2330 did not change the original purpose of the bill, which was to regulate gaming.⁷² The second prong was also met because the title of the bill was sufficient to put reasonable persons on notice as to its subject mat-

62. *Pennsylvanians*, 877 A.2d at 407 (citing *Consumer Party v. Commonwealth*, 507 A.2d 323, 335 (Pa. 1986)).

63. *Consumer Party*, 507 A.2d at 335.

64. *Pennsylvanians*, 877 A.2d at 408.

65. PA. CONST. art. III, § 1.

66. *Pennsylvanians*, 877 A.2d at 408.

67. *Id.* at 408-09.

68. *Id.* The court held that the original purpose of the bill in this analysis should be viewed in reasonably broad terms. *Id.*

69. *Id.* at 409.

70. *Id.* See PA. CONST. art. III, § 1.

71. *Pennsylvanians*, 877 A.2d at 409.

72. *Id.*

ter.⁷³ Chief Justice Cappy, writing for the court, held that the original purpose of the bill was not changed and article III, section 1 was not violated by the process by which H.B. 2330 became the Gaming Act.⁷⁴

After consideration of the article III, section 1 and 3 claims, the court dismissed the argument of the Concerned Citizens that the bill violated article III, section 4.⁷⁵ According to the court, section 4 could not be violated without a violation of either sections 1 or 3.⁷⁶ The court also dismissed the Concerned Citizens claim under article III, section 10,⁷⁷ that the bill was a revenue bill which originated in the Senate.⁷⁸ Since the bill started in the House as H.B. 2330 and was later amended, section 10 did not apply.⁷⁹

The Concerned Citizens next alleged that article III, section 6⁸⁰ was violated because section 1903 of the Gaming Act⁸¹ repealed sections of other acts without printing the text of the acts that were repealed in the bill.⁸² This section of the Act provided that section 493(29) of the Liquor Code, which prohibited providing

73. *Id.*

74. *Id.* at 409-10.

75. *Id.* at 409. See PA. CONST. art. III, § 4. Section 4 provides:

Every bill shall be considered on three different days in each House. All amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill and before the final vote is taken, upon the written request addressed to the presiding officer of either House by at least twenty-five percent of the members elected to that House, any bill shall be read at length in that House. No bill shall become a law, unless on its final passage the vote is taken by yeas and nays, the names of the persons voting for and against it are entered on the journal, and a majority of the members elected to each House is recorded thereon as voting in its favor.

PA. CONST. art. III, § 4.

76. *Pennsylvanians*, 877 A.2d at 410.

77. PA. CONST. art. III, § 10. Section 10 provides that "all bills for raising revenue shall originate in the House of Representatives but the Senate may propose amendments in other bills." *Id.*

78. *Pennsylvanians*, 877 A.2d at 412-14.

79. *Id.* at 414.

80. PA. CONST. art. III, § 6 provides, "No law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be re-enacted and published at length." *Id.*

81. 4 PA. CONS. STAT. § 1903. Section 1903 provided,

(a) Inconsistent – The following acts and parts of acts are repealed as follows:

(1) Section 493(29) of the act of April 12, 1951 (P.L. 90, No. 21), known as the Liquor Code, is repealed absolutely.

(2) The provisions of 18 Pa.C.S. § 5513(a) are repealed insofar as they are inconsistent with this part.

(b) General.—All other acts or parts of acts are repealed insofar as they are inconsistent with this part."

Id.

82. *Pennsylvanians*, 877 A.2d at 410-11.

alcohol to customers for free or below cost, was repealed.⁸³ The section of repealed text was not published in the Gaming Act.⁸⁴ The Concerned Citizens complaint also alleged that a provision of the Pennsylvania Crimes Code,⁸⁵ which made slot machines illegal, was repealed without providing the full text in the Gaming Act.⁸⁶

The court held that when legislation purports to repeal a specific section of another bill, the section of the repealed bill must be published, unless it is apparent from the legislation which part of the bill is repealed.⁸⁷ A general repeal of any inconsistent legislation in a specific statute does not violate the requirements of section 6.⁸⁸ Applying these standards, the court determined that section 1903(a)(1) of the Gaming Act violated the requirements set forth in article III, section 6, because the full text of the section repealed was not published.⁸⁹ Section 1903(a)(2), however, was not violative of the constitution because that section acted as a "general repealer" of any inconsistent legislation and was not severed from the Gaming Act.⁹⁰

The last issue to be resolved by the Pennsylvania Supreme Court involved the claim of the Concerned Citizens that the enactment of the Gaming Act violated Article II, Section 1 of the Pennsylvania Constitution.⁹¹ The Citizens asserted that section 1506 of the Act⁹² was unconstitutional because it granted imper-

83. 47 PA. CONS. STAT. §§ 4-493(29) (repealed). Section 493(29) of the Liquor Code provided that it shall be unlawful

[f]or any licensee that has obtained a license to conduct thoroughbred or harness horse racing meetings respectively with pari-mutuel wagering from either the State House Racing Commission pursuant to the act of December 17, 1981 (P.L. 435, No. 135), known as the "Race Horse Industry Reform Act," and that has obtained a slot machine license, or any employee, servant or agent of such licensee, to give away free of charge or below cost any liquor or malt or brewed beverage as a customary practice.

Id.

84. *Pennsylvanians*, 877 A.2d at 411.

85. 18 PA. CONS. STAT. § 5513(a). Section 5513(a) provides, in part, that it is a criminal offense for a person to "[i]ntentionally or knowingly make, assemble, set up, maintain, sell, lend, lease, give away, or offer for sale, loan, lease or gift . . . any slot machine." *Id.*

86. *Pennsylvanians*, 877 A.2d at 411.

87. *Id.* at 412.

88. *Id.*

89. *Id.* See § 1903(a)(1), *supra* note 81.

90. *Id.* See § 1903(a)(2), *supra* note 81.

91. PA. CONST. art. II, § 1. Section 1 provides that "the legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives." *Id.*

92. 4 PA. CONS. STAT. § 1506. Section 1506, found unconstitutional in *Pennsylvanians*, provided:

missible legislative authority to the Gaming Control Board.⁹³ According to the Concerned Citizens, the Gaming Act granted the Board powers of a super-zoning board with no limits and unfettered discretion.⁹⁴ This alleged power would permit the Board to disregard state and local zoning laws in licensing and operating slot machine casinos throughout Pennsylvania.⁹⁵ The Concerned Citizens also contended that section 1102(10) of the Gaming Act⁹⁶ offered no meaningful guidance of where to locate the casinos.⁹⁷

The Commonwealth argued that section 1506 did not grant the Gaming Control Board authority to disregard the state and local zoning laws, but simply allowed approved licensees exemptions from the zoning laws.⁹⁸ The Commonwealth asserted that the licensing process, which included eligibility requirements, restricted the authority of the Board in choosing potential sites for the casinos.⁹⁹ These restrictions granted the Board the power to perform background checks on applicants and identify potential criteria that the Board should consider when issuing a slot machine license.¹⁰⁰

The court discussed the prevailing Pennsylvania Supreme Court cases in deciding whether the authority granted to the Gaming Control Board constituted an unconstitutional grant of legislative

The conduct of gaming as permitted under this part, including the physical location of any licensed facility, shall not be prohibited or otherwise regulated by any ordinance, home rule charter provision, resolution, rule or regulation of any political subdivision or any local or State instrumentality or authority that relates to zoning or land use to the extent that the licensed facility has been approved by the board. The board may, in its discretion consider such local zoning ordinances when considering an application for a slot machine license. The board shall provide the political subdivision, within which an applicant for a slot machine license has proposed to locate a licensed gaming facility, a 60-day comment period prior to the board's final approval, condition or denial of approval of its application for a slot machine license. The political subdivision may make recommendations to the board for improvements to the applicant's proposed site plans that take into account the impact on the local community, including, but not limited to, land use and transportation impact. This section shall also apply to any proposed racetrack or licensed racetrack.

Id.

93. *Pennsylvanians*, 877 A.2d at 415-16.

94. *Id.*

95. *Id.*

96. 4 PA. CONS. STAT. § 1102(10). Section 1102(10) provides that "the public interest of the citizens of the Commonwealth and the social effect of gaming shall be taken into consideration in any decision or order made pursuant to this part." *Id.*

97. *Pennsylvanians*, 877 A.2d at 416.

98. *Id.*

99. *Id.*

100. *Id.* at 416-17.

power.¹⁰¹ In *Blackwell v. State Ethics Commission*,¹⁰² the Pennsylvania Supreme Court defined legislative power as "the power to make, alter, and repeal laws."¹⁰³ The court in *Blackwell* also held that the Pennsylvania Constitution requires that the General Assembly make the basic policy choices and that any delegation of these choices is unconstitutional.¹⁰⁴ In *Tosto v. Pennsylvania Nursing Home Loan Agency*,¹⁰⁵ the Pennsylvania Supreme Court held that the delegation of power to the Pennsylvania Nursing Home Loan Agency was not unconstitutional because the law "provides very specific definitions of pivotal statutory terms and detailed guidelines for certain important agency decisions."¹⁰⁶ In *Gilligan v. Pennsylvania Horse Racing Commission*,¹⁰⁷ there was a determination by the Pennsylvania Supreme Court that broad power could be granted to the agency so long as the legislation contains standards to guide and restrain the functions of the agency.¹⁰⁸ While these standards must be included in the bill, *Gilligan* held that it is not necessary to spell out all the details of the authority granted to the agency.¹⁰⁹

In *Pennsylvanians*, the court held that the delegation of power to the Gaming Control Board by the General Assembly in section 1506 of the Gaming Act was unconstitutional.¹¹⁰ Section 1506 established eligibility requirements and additional criteria with respect to the issuance of licenses under the Gaming Act, but it did not give the Gaming Control Board sufficient guidelines with respect to its authority over choosing sites for slot machine casinos.¹¹¹ The authority granted to the Board, which effectively preempted local zoning ordinances, was too broad, and the court held that section 1506 was unconstitutional and severed it from the Gaming Act.¹¹²

The Pennsylvania Constitution of 1874 changed many of the legislative procedures and requirements that must be followed by

101. *Id.* at 415.

102. 567 A.2d 630 (Pa. 1989).

103. *Blackwell*, 567 A.2d at 636 (quoting *In Re Marshall*, 69 A.2d 619, 626 (Pa. 1949)).

104. *Id.* at 636-37.

105. 331 A.2d 198 (Pa. 1975).

106. *Tosto*, 331 A.2d at 203.

107. 422 A.2d 487 (Pa. 1980).

108. *Gilligan*, 422 A.2d at 489.

109. *Pennsylvanians*, 877 A.2d at 418 (quoting *Gilligan*, 422 A.2d at 489).

110. *Pennsylvanians*, 877 A.2d at 419.

111. *Id.*

112. *Id.*

the General Assembly.¹¹³ These changes, located in Article III of the Pennsylvania Constitution, were thought necessary because of many problems which had plagued the era, including logrolling,¹¹⁴ favoritism, and bribery.¹¹⁵ Article III promotes openness and accountability in the General Assembly by placing restraints on the legislative process.¹¹⁶ The requirements in article III include: (1) that the original purpose of a bill cannot be changed by alteration or amendment; (2) that the bill must contain a single-subject, which is clearly expressed by its title; (3) each bill must be read three times on separate days in each House of the General Assembly; and (4) appropriations must be made in separate bills unless made for purpose of public debt, public schools, or for the judicial, legislative, or executive branches.¹¹⁷ It has been suggested by one scholar that these requirements are superior to those of the United States Congress and many other states.¹¹⁸

Under section 3 of article III, the Pennsylvania Constitution imposes a requirement that the General Assembly may not pass a bill which contains more than one subject,¹¹⁹ and that this subject must be clearly expressed in the title of the bill.¹²⁰ This section

113. ROBERT E. WOODSIDE, PENNSYLVANIA CONSTITUTIONAL LAW 295 (Murrelle Printing Company, Inc. 1985).

114. THE PENNSYLVANIA CONSTITUTION, A TREATISE ON RIGHTS AND LIBERTIES 62 n.250 (Ken Gormley, et al. eds., George T. Beisel Company, Inc. 2004). "Logrolling" is defined by Professor Gormley as the "[t]rading [of] votes among special interests and legislators. One group – and their legislators – would support another group's special legislation in exchange for the other special interest's support in return." *Id.*

115. WOODSIDE, *supra* note 113, at 295.

116. AFL-CIO *ex rel. George v. Commonwealth*, 757 A.2d 917, 923 (Pa. 2000). The court explained that the purpose of Article III is "to place restraints on the legislative process and encourage an open, deliberative and accountable government." *AFL-CIO ex rel. George*, 757 A.2d at 923.

117. WOODSIDE, *supra* note 113, at 295-98. Woodside suggested that "[t]he basic provisions for the enactment of legislation by the General Assembly of Pennsylvania are contained in the first six sections of article III of the Constitution. The procedure is quite different and far superior to that of Congress and many other states." *Id.* at 295.

118. *Id.* at 295.

119. *Payne v. School District of Coudersport*, 31 A. 1072 (Pa. 1895). The court defined subject as:

Those things which have a "proper relation to each other," which fairly constitute parts of a scheme to accomplish a single general purpose, "relate to the same substance" or "object." And provisions which have no proper legislative relation to each other, and are not part of the same legislative scheme, may not be joined in the same act

Payne, 31 A. at 1072.

120. PA. CONST. art. III, § 3.

was originally added to the constitution by amendment in 1864¹²¹ and later included in the constitution of 1874.¹²² Section 3 reached its current form by amendment in 1967.¹²³ The purpose of section 3 is to prevent the passage of omnibus bills,¹²⁴ logrolling, and the attachment of miscellaneous provisions to bills, which would not have enough support to pass as separate legislation.¹²⁵ These preventions ensure that the public and legislators are given fair notice of all provisions included in a bill.¹²⁶ In determining whether amendments to a bill comply with the single-subject requirement, a court must determine if the additions carry out the main objective of the bill or are germane to the original title of the bill.¹²⁷

The court in *City of Philadelphia* noted that the application of the germaneness test was applied strictly in the twentieth century.¹²⁸ In the 1927 opinion of *Commonwealth ex rel. Woodruff v. Humphrey*,¹²⁹ the Supreme Court of Pennsylvania declared the Engineer's Licensing Act unconstitutional because the single-subject requirement had not been met.¹³⁰ The court held that the bill contained two subjects because the title included regulations covering professional engineers and land surveyors, which were two separate professions.¹³¹ This strict application of the germaneness test was also followed in *Yardley Mills Co. v. Bogar-*

121. WOODSIDE, *supra* note 113, at 308. The original provision in the amendment to the constitution provided that, "No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill." *Id.*

122. *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 586 (Pa. 2003).

123. WOODSIDE, *supra* note 113, at 308. Section 3 was amended on May 16, 1967, with the addition of "or a bill codifying or compiling the law or a part thereof." *Id.*

124. *City of Philadelphia*, 838 A.2d at 586 (citing Charles W. Rubenhal II, Comment, *The Constitution and the Consolidated Statutes*, 80 DICK. L. REV. 118, 120 (1975)). An omnibus bill was defined by Rubenhal as "the practice of incorporating into one bill a variety of distinct and independent subjects of legislation and intentionally disguising the real purpose of the bill by a misleading title or by the comprehensive phrase 'and for other purposes.'" Rubenhal, Comment, *The Constitution and the Consolidated Statutes*, 80 DICK. L. REV. at 120.

125. *City of Philadelphia*, 838 A.2d at 586.

126. *Id.*

127. *Mallinger v. City of Pittsburgh*, 175 A. 525, 526 (Pa. 1934).

128. *City of Philadelphia*, 838 A.2d at 587.

129. 136 A. 213 (Pa. 1927).

130. *Woodruff*, 136 A. at 217.

131. *Id.* at 214. The title of the Engineer's Licensing Act was,

An act to regulate the practice of the profession of engineering and of land surveying; creating a state board for the registration of professional engineers and land surveyors; defining its powers and duties; imposing certain duties upon the commonwealth and political subdivisions thereof in connection with public work; and providing penalties.

Id.

dus,¹³² a 1936 decision.¹³³ The Pennsylvania Supreme Court held in *Yardley* that the act in question involving canal waters contained three separate subjects.¹³⁴ Although all involved water canals in Pennsylvania, the three subjects¹³⁵ were not germane enough to each other to pass constitutional muster.¹³⁶

The court in *City of Philadelphia* further acknowledged that while the single-subject requirement of article III, section 3 was still in full effect, the most recent decisions have given more deference to the legislature in these matters.¹³⁷ The court held that deference should be given to the General Assembly in allowing legislation under the single-subject requirement as long as the contents of the bill can be "reasonably viewed as falling under one subject."¹³⁸ In *City of Philadelphia*, the purpose of the act in dispute was to amend Title 53 of the Pennsylvania Consolidated Statutes, entitled Municipal Corporations.¹³⁹ The Commonwealth argued that the contents of the bill involved the single-subject of municipalities and, thus, was constitutional under section 3 of article III.¹⁴⁰ The court, however, found that some of the provisions affected municipalities only indirectly.¹⁴¹ The holding continued that, if the single-subject is only affected indirectly, the public and

132. 185 A. 218 (Pa. 1936).

133. *Yardley*, 185 A. at 218.

134. *Id.* at 220. The Act was entitled:

An Act Relieving canal corporations, owning any canals or other artificial waterways constructed by the Commonwealth as parts of its public works, from the obligation to maintain the same for transportation purposes, under certain conditions; and authorizing such corporations to use, sell, or lease the waters of such canals and waterways for domestic, manufacturing, commercial, and other lawful purposes, and to use, sell, lease, or otherwise dispose of the whole or any part of the lands occupied by such canals or waterways, and the property appurtenant thereto; and authorizing the Department of Highways to acquire, by gift, all or any part of such lands, and to sell or otherwise dispose of all or any part of such lands as shall not be needed for highway purposes.

Id. at 220 n.1.

135. *City of Philadelphia*, 838 A.2d at 587. The Court summarized the subjects in *Yardley*: "the first relieved canal companies of the obligation to maintain waterways obtained from the Commonwealth; the second granted such companies the right to sell the water for commercial purposes; and the third authorized the Commonwealth to acquire canal lands by gift and to sell portions of them." *Id.*

136. *Yardley*, 185 A. at 220.

137. *City of Philadelphia*, 838 A.2d at 587. The single-subject standard has been applied "to validate legislation containing many different topics so long as those topics can reasonably be viewed as falling under one broad subject." *Id.*

138. *Id.* at 587.

139. *Id.* at 571.

140. *Id.* at 589.

141. *Id.*

legislature are not put on notice and that the bill is therefore unconstitutional.¹⁴²

Another requirement of article III is that imposed by section 1, which prohibits the altering or amending of the original purpose of a bill during its passage through either House of the legislature before becoming law.¹⁴³ Article III, section 1, like the other sections in Article III adopted in the Pennsylvania Constitution of 1847 was designed to prevent legislative corruption.¹⁴⁴ In *Consumer Party v. Commonwealth*, it was argued that a change in the title of a bill was unconstitutional under article III, section 1.¹⁴⁵ The original bill in *Consumer Party* purported to make some minor amendments to local laws,¹⁴⁶ and was later passed by the General Assembly as a bill setting forth compensation and salaries of certain public officials, including the Governor and General Assemblymen.¹⁴⁷ The Pennsylvania Supreme Court conceded that the change in the title of the bill was a materially different change in the original purpose of the bill.¹⁴⁸ However, the Pennsylvania Supreme Court determined that there was no violation of section 1 because the title, in its final form, gave proper notice to the general public and the legislators.¹⁴⁹

To support its holding, the court emphasized the necessity of committees in the legislative process and the almost certainty of material changes in a bill at these committees.¹⁵⁰ The court held that when a bill is presented in final form to both Houses with a clearly expressed title, proper notice is given and the act is consti-

142. *City of Philadelphia*, 838 A.2d at 589.

143. PA. CONST. art. III, § 1.

144. *Consumer Party*, 507 A.2d at 330.

145. *Id.* at 325.

146. *Id.* The title of the original bill, Senate Bill 270, was "an act relating to counties of the third, fourth, fifth, sixth, seventh, and eighth classes; amending, revising, consolidating and changing the laws relating thereto further providing for the filling of vacancies in certain circumstances." *Id.*

147. *Id.* at 326. The amended bill, after the Committee of Conference on Senate Bill 270 was entitled:

An act establishing the salaries and compensation of certain public officials including justices and judges of Statewide Courts, judges of courts of common pleas, judge of the Philadelphia Municipal Court, judges of the Philadelphia Traffic Court, district justices and the Governor, the State Treasurer, the Auditor General, the Attorney General and certain other State officers and the salary and certain expenses of the members of the General Assembly; and repealing inconsistent acts.

Id.

148. *Id.* at 332.

149. *Consumer Party*, 507 A.2d at 335.

150. *Id.*

tutional under section 1.¹⁵¹ There was no element of deception in the title of the bill, which is ultimately what section 1 is employed to protect.¹⁵²

To promote the goals of fair notice and preventing deception, section 6 of article III sets restrictions on the General Assembly in amending, altering, and repealing legislation.¹⁵³ In *Commonwealth v. Cooper*,¹⁵⁴ the Supreme Court of Pennsylvania determined the issue of whether a section of a law that was repealed must be republished in full text in the repealer bill.¹⁵⁵ The defendant in *Cooper* sought to reverse a conviction of selling liquor without a license, on grounds that the act under which he was charged violated Article III, Section 6 of the Pennsylvania Constitution, because it did not include the entire text of a repealed act.¹⁵⁶ The court in *Cooper* held that the legislature was required to publish the full text of the new statute, not the old one, when repealing provisions.¹⁵⁷

In *Commonwealth v. Hallberg*,¹⁵⁸ the defendant was arrested in violation of the Motor Vehicle Code for operating a motor vehicle

151. *Id.*, overruled by *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 877 A.2d 383, 408-09 (Pa. 2005). As a result of the holding in *Pennsylvanians*, this is no longer the standard to which article III, section 1 claims are held. *Pennsylvanians*, 877 A.2d at 408-09. The following is the new test:

a court entertaining a challenge to legislation under Article III, Section 1 must conduct a two-part inquiry. First, the court will consider the original purpose of the legislation and compare it to the final purpose and determine whether there has been an alteration or amendment so as to change the original purpose. Second, a court will consider, whether in its final form, the title and contents of the bill are deceptive.

Pennsylvanians, 877 A.2d at 408-09.

152. *Consumer Party*, 507 A.2d at 335.

153. PA. CONST. art. III, § 6. Section 6 provides that "No law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be re-enacted and published at length." *Id.*

154. 121 A. 502 (Pa. 1923).

155. *Cooper*, 121 A. at 503.

156. *Id.* at 503.

157. *Id.* at 505 (citing *Wilson v. Downing*, 4 Pa. Super. 487, 493 (Pa. Super. Ct. 1897)). *Wilson*, citing the Ohio decision of *Lehman v. McBride*, 15 Ohio St. 573 (Ohio 1863), stated:

In the case of an amendment of a section or sections of a prior statute, that the new act shall contain, not the section or sections which it proposes to amend, but the section or sections in full, as it purports to amend them. That is, it requires, not a recital of the old section, but a full statement, in terms, of the new one.

Cooper, 121 A. at 505 (citing *Wilson*, 4 Pa. Super. at 493 (citing *Lehman*, 15 Ohio St. at 602)).

158. 97 A.2d 849 (Pa. 1953).

without a permit.¹⁵⁹ The Motor Vehicle Code described the violative conduct in subsection (a) and the penalty in subsection (b).¹⁶⁰ Subsection (a) was amended in a new act and republished, while subsection (b) remained the same, but was not republished.¹⁶¹ The defendant challenged his conviction under article III, section 6 on the grounds that the section in which the penalty for the violation was located was not republished upon amendment of the act.¹⁶² The court held that the Pennsylvania Constitution required the entire section of the act to be republished at length, and reversed the conviction.¹⁶³

While Article III of the Pennsylvania Constitution focuses on the procedures the General Assembly must follow in enacting legislation, article II outlines the organization of the General Assembly.¹⁶⁴ Article II, section 1¹⁶⁵ grants the General Assembly legislative power, the power to make, alter, and repeal laws.¹⁶⁶ Much litigation has arisen concerning section 1 and its relationship with the separation of powers.¹⁶⁷ Under the structure of Pennsylvania, legislative power must remain with the legislature and cannot be granted or delegated to the judiciary or executive branches of government.¹⁶⁸

In an 1847 decision, *Parker v. Commonwealth*,¹⁶⁹ the Supreme Court of Pennsylvania determined whether a local referendum, which enabled the people of the Commonwealth to accept or reject certain provisions of a bill, was an unconstitutional grant of legislative power.¹⁷⁰ The referendum in question involved allowing the

159. *Hallberg*, 97 A.2d at 850.

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.* at 852.

164. *WOODSIDE*, *supra* note 113, at 245.

165. PA. CONST. art. II, § 1. Section 1 provides, "The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives." *Id.*

166. *WOODSIDE*, *supra* note 113, at 246 (citing *Mt. Lebanon v. County Board of Election of Allegheny County*, 368 A.2d 648, 649 (Pa. 1977)).

167. *WOODSIDE*, *supra* note 113, at 246.

168. *Id.*

169. 6 Pa. 507 (Pa. 1847).

170. *Parker*, 6 Pa. at 507. The *Parker* court explained the difference between the federal government and that of Pennsylvania, stating that

[u]nlike that of the United States, the government of Pennsylvania is not one of enumerated powers. Still, it is a government of limited authority; and it is, therefore, not to be denied that the action of its legislature may be invalid, though it contravene no express provision of the constitution, if it be in viola-

people of different wards an opportunity to vote on the passage of legislation.¹⁷¹ The court held that it was an unconstitutional grant of legislative power to allow the people of Pennsylvania to determine whether to pass the legislation.¹⁷² The people had already granted the power to the General Assembly in section 1; therefore, it could not be delegated back to the people without violating section 1.¹⁷³

The issue as to the delegation of legislative power arose again in *Appeal of Locke*,¹⁷⁴ an 1873 opinion.¹⁷⁵ In *Locke*, the legislature sought to allow electors to vote for or against the issuance of licenses to sell liquor.¹⁷⁶ The court held that, while the legislature cannot delegate its law-making power, it can delegate determinations of facts or the state of things to which the law is contingent.¹⁷⁷ In this case, all that was delegated to the people was a vote of whether or not a license should be issued.¹⁷⁸ The voting terms were included in the law and the consequences of the result of the vote sprang from the law.¹⁷⁹ The legislature then did not delegate its power to make laws, but only gave the people a choice of a fact or state of things from which the results of the law flowed.¹⁸⁰

The delegation of legislative powers to the Department of Labor and Industry was examined in *Holgate Brothers v. Bashore*¹⁸¹ in 1938.¹⁸² At issue was the 44-Hour Week Law, which limited the weekly hours that employees could work in Pennsylvania.¹⁸³ The dispute arose over a provision in the act that gave the Department of Labor and Industry and the Labor Board broad discretion, al-

tion of the spirit of the instrument, and the genius of the public institutions designed to be created by it.

Id.

171. *Id.*

172. *Id.*

173. *Id.*

174. 72 Pa. 491 (Pa. 1873).

175. *Locke*, 72 Pa. at 491.

176. *Id.* at 494.

177. *Id.* at 498. Justice Agnew stated, "The legislature cannot delegate its power to make law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend." *Id.*

178. *Id.* at 498.

179. *Id.*

180. *Locke*, 72 Pa. at 498.

181. 200 A. 672 (Pa. 1938).

182. *Holgate*, 200 A. at 674.

183. *Id.* The 44 Hour Week Law provided in part that "the Department of Labor and Industry, with the approval of the Industrial Board, may make, alter, amend and repeal general rules and regulations prescribing variations from said schedule of hours." *Id.*

lowing these entities to make alterations to the general rules set forth in the Act.¹⁸⁴ Consistent with *Locke*, the Pennsylvania Supreme Court in *Holgate* held that the legislature could confer on a department power to find facts essential to the operation of the law.¹⁸⁵ The 44-Hour Week Law was found by the court to be unconstitutional because it granted the departments the power to make, alter, amend, and repeal the rules of the act.¹⁸⁶

The law in this area today was summarized by the Pennsylvania Supreme Court in *Gilligan v. Horse Racing Commission*:¹⁸⁷ while the legislature cannot delegate its legislative power, it may, in connection with the execution of the law, confer authority and discretion upon another branch of government.¹⁸⁸ Within this granted authority, the legislature must make the basic policy choices and the legislation must give guidance and restrain the branch to which the authority is delegated.¹⁸⁹ In *Gilligan*, the Jockey's Guild, Inc. challenged the constitutionality of a decision by the Horse Racing Commission pursuant to the Horse Racing Act to promulgate a new fee schedule which determined the compensation of jockeys.¹⁹⁰ The challengers argued that the determination was outside the authority of the Horse Racing Commission.¹⁹¹ Applying the above standard, the court in *Gilligan* determined that the Horse Racing Commission acted well within its broad general supervisory powers in creating the fee schedule and those powers were constitutionally granted to the Commission by the legislature.¹⁹²

The holding in *Pennsylvanians* should not be surprising, as it follows the historical trend in the Commonwealth of granting wide deference to the General Assembly in enacting legislation. The issue then arises as to whether greater deference is given at the

184. *Id.* at 674.

185. *Id.* at 675. The court stated,

The legislature may, however, leave to administrative officers, boards and commissions, the duty to determine whether the facts exist to which the law is itself restricted. In all such occasions, nevertheless, the legislative body must surround such authority with definite standards, policies and limitations to which such administrative officers, boards or commissions, must strictly adhere and by which they are strictly governed.

Id.

186. *Id.* at 679.

187. 422 A.2d 487 (Pa. 1980).

188. *Gilligan*, 422 A.2d at 489.

189. *Id.*

190. *Id.* at 488.

191. *Id.* at 489.

192. *Id.* at 491.

expense of the underlying purpose of Article III of the Pennsylvania Constitution, which is to promote openness and accountability of the General Assembly throughout the legislative process. These goals are maintained by the legislature when fair notice of a bill is given to all legislators and the public at large.

The wide latitude given to the General Assembly is apparent in *Pennsylvanians*. The Pennsylvania Supreme Court held that the General Assembly could constitutionally pass a bill, which went from a one-page directive to the state police in performing background checks on horseracing license applicants, to a 145-page authorization of slot machine casinos throughout the Commonwealth.¹⁹³ This is constitutionally possible because of the broad interpretation of the original purpose and single-subject requirements imposed by the court. *Pennsylvanians* permits these requirements set forth in article III, sections 1 and 3, respectively, to be met under the all-encompassing topic of the regulation of gaming.¹⁹⁴

At first glance, it appears that the court further restricted the General Assembly under article III, section 1, by developing a new test to determine constitutionality.¹⁹⁵ This test is undermined, however, by the broad interpretation of the original purpose of the bill. After *Consumer Party*, in determining whether the original purpose of a bill has changed, the court based its determination on viewing the bill only in its final form, not on comparing it to its original form.¹⁹⁶

In *Pennsylvanians*, the court reinterpreted article III, section 1 and implemented a new two-prong analysis that requires courts to compare the purpose of the bill in its original form against its final form and to determine if the change in titles is deceptive.¹⁹⁷ The court also held that the original purpose of the bill should be viewed broadly.¹⁹⁸ The court reasoned that the purpose of a bill will almost always materially change due to the complexities of the legislative process.¹⁹⁹ In support of this proposition, the court

193. *Pennsylvanians*, 877 A.2d at 392.

194. *Id.* at 383. See PA. CONST. art. III, §§ 1, 3.

195. *Pennsylvanians*, 877 A.2d at 406. See PA. CONST. art. III, § 1.

196. *Consumer Party*, 507 A.2d at 335.

197. *Pennsylvanians*, 877 A.2d at 408-09.

198. *Id.* at 409.

199. *Id.*

emphasized the important role of joint committees in molding legislation before a bill reaches its final passage.²⁰⁰

By construing the original purpose of the bill broadly, the court allowed the General Assembly and the Governor in *Pennsylvanians* to completely change legislation without having to meet all of the requirements of a new bill. H.B. 2330 was written with the purpose of increasing the requirements of applicants for horse racing licenses. The Gaming Act, as passed by the legislature, (1) authorizes the creation of slot machine casinos throughout Pennsylvania, and (2) creates the Gaming Control Board to govern the casinos.²⁰¹ The change in the Gaming Act from its inception was more than material; it was complete. The Gaming Act is essentially a new bill, and it should be treated as such by the legislature in order to properly give fair notice as required to the general public and the legislators.

The two-prong analysis does not represent much of a shift by the court, because the original purpose of the bill is determined after the final bill has already been passed. The purpose, therefore, is hardly original; rather, it is a post-legislation pronouncement to comply with the requirements of the Pennsylvania Constitution. Under the rationale set forth by Chief Justice Cappy, a multitude of provisions could have been added to H.B. 2330 while maintaining the general topic of gaming regulation.²⁰² Some activities that could fall under the regulation of gaming include virtually any type of casino game, sports wagering, and a transformation of the Pennsylvania Turnpike into the Las Vegas Strip.

The holding in *Pennsylvanians* also did not uphold the underlying purpose of article III, because the broad interpretation of the original purpose and single-subject allowed the Gaming Act to swiftly pass through the legislature in five days.²⁰³ The bill was amended by the House on Thursday and passed on Saturday, then passed by the Senate on Sunday, and signed into law by Governor Rendell on Monday.²⁰⁴ The public was not given fair notice as the new bill was passed over the weekend, without the required enactment procedures. The passage of the bill also did not promote openness and accountability of the General Assembly, as it was

200. *Id.*

201. *Id.* at 392.

202. *Pennsylvanians*, 877 A.2d at 409.

203. *Id.* at 393.

204. *Id.* at 391.

permitted to operate in a swift manner, protecting it from public scrutiny.

While there are some criticisms of the decisions regarding the disposition of the article III issues in the case, Chief Justice Cappy properly upheld precedent in the decision of the article II, section 1 issue.²⁰⁵ The standard to apply was formulated in *Gilligan*: The General Assembly cannot delegate its law-making power, but can confer authority and discretion on other branches of government with regards to the execution of the law.²⁰⁶ The court in *Pennsylvanians* decided that the delegation of duties by the General Assembly to the Gaming Control Board was an unconstitutional grant of legislative power, and it severed section 1506 from the Gaming Act.²⁰⁷ The standard under *Gilligan* was upheld because the Gaming Control Board was given wide discretion over the locations chosen to host the slot machine casinos, but was given little, if any, guidance in how to make these decisions.²⁰⁸ Section 1506 would have permitted the Gaming Control Board to make the basic policy decisions of the legislative branch and not simply the authority to execute the laws.

Aside from two collateral issues, which included the delegation of power to the Gaming Control Board and appropriations unrelated to gaming, the Gaming Act was generally upheld by the Pennsylvania Supreme Court in *Pennsylvanians*.²⁰⁹ While the impact on future legislation appears to be minimal, the outcome of the case should have a large economic impact. The projected revenues and potential benefits of the slot machine casinos vary, depending on the source of the information. Regardless of the economic impact, one thing is certain: as a result of the holding in *Pennsylvanians*, citizens of the Commonwealth will soon have an increased opportunity to gamble within its borders.

Brian D. Kravetz

205. PA. CONST. art. II, § 1.

206. *Gilligan*, 422 A.2d at 489.

207. *Pennsylvanians*, 877 A.2d at 418.

208. *Gilligan*, 422 A.2d at 489.

209. *Pennsylvanians*, 877 A.2d at 383.

